

Memo

Date: 30 March 2009
To: LCA Directors and CEOs of Constituent Bodies
From: Acting Secretary-General

**Subject: DEPOSITS AND WHOLESALE FUNDING
GUARANTEE SCHEME – ANNOUNCEMENT OF FEE
WAIVER**

Action Required

For information.

Issues/Purpose

1. The federal Government has announced details on the Scheme Administrator web-site (<http://www.guaranteescheme.gov.au>) of accounts over which a waiver has been granted of the Fee to access the Deposits Guarantee on amounts in excess of \$1 million.
2. The Fee waiver applies prospectively from 1 April 2009.
3. The Fee waiver will apply to general trust accounts maintained by law practices (or their associates); general trust accounts maintained by approved clerks (Victoria); and Statutory Deposit Accounts.
4. The Fee waiver will not, however, apply to Statutory Interest Accounts or public purpose-type funds into which is accumulated interest or interest-like payments that originate on monies held in general trust accounts or Statutory Deposit Accounts.
5. Treasury have advised that the Fee waiver will be automatically applied by deposit-taking institutions and that no action is required by law practices or regulatory authorities to access the Fee waiver

Background/Developments

6. The Law Council wrote to the Treasurer and Attorney-General on 12 November 2008 pointing out that imposition of the Fee on general trust accounts would add to legal costs because neither the law practice nor clients whose monies are deposited in general trust accounts derive any benefit in the form of interest on general trust accounts against which the Fee could be offset.

7. In its submission and subsequent discussions with Treasury, Law Council also expressed its concerns that any offset of the Fee against interest arising from trust monies would lead to a reduction in funds that would otherwise be available for public purposes such as legal aid, funding of community legal centres, regulatory costs, etc.
8. The Government has decided that the waiver of the Fee will apply to accounts which:
 - are deposit accounts which are required by a law of the Commonwealth, a State or a Territory to be established and maintained by a party (the account-holder) for the purpose of holding monies on trust for another party or party(s); where
 - interest or equivalent payments are required by law to be paid into a special fund administered by a government instrumentality or agent to be used for a public purpose, rather than being payable to the account-holder or the beneficiary or beneficiaries of the trust (or related parties).
9. In deciding not to extend the Fee waiver beyond general trust accounts and Statutory Deposit Accounts, the Government has, in effect, decided that the Guarantee Scheme Fee will continue to apply to accounts or funds (including public purpose accounts or funds) which are able to accrue interest or otherwise invest funds and retain the income that arises, including interest that arises on Government guaranteed bank accounts.
10. In deciding that the Fee waiver will apply prospectively from 1 April 2009, it is understood the Government has taken into consideration the need to consult with various authorised deposit-taking institutions, peak bodies representing banks, building societies and credit unions and the Reserve Bank of Australia (as Scheme Administrator) regarding the changes necessary to identify and isolate the relevant accounts in their systems, how to change the fee reporting arrangements and documentation, and the administrative arrangements for applying the Fee waiver.
11. The Fee waiver on general trust accounts and Statutory Deposit Accounts from 1 April 2009 is a significant positive outcome for law practices and their clients. However, Law Council remains concerned that the Fee waiver has not been backdated and that the Fee will continue to apply to Statutory Interest and other public purpose funds, thereby reducing funding that would otherwise go to a range of public purposes.
12. The Law Council has been advised that law practices that have not previously sought to opt-in to the Deposits Guarantee (for amounts above \$1 million) with the financial institution(s) at which they maintain a general trust account will need to do so. The Law Council has prepared a further update for practitioners which Constituent bodies may wish to include in the advice they provide practitioners.

Attachments

- List of accounts on which a Fee waiver has and has not been granted.
- Further update for practitioners.

Regards,

Margery Nicoll.

ATTACHMENT 1: LIST OF ACCOUNTS.

Australian Capital Territory

Fee waiver applies

- General trust accounts
- Statutory Deposit Account

No Fee waiver

- Statutory Interest Account
- Solicitors' Fidelity Fund of the Australian Capital Territory

New South Wales

Fee waiver applies

- General trust accounts
- Statutory Deposits Account

No Fee waiver

- Public Purpose Fund
- Legal Aid Fund (s62, *Legal Aid Commission Act 1977*)
- Legal Practitioners' Fidelity Fund
- Law and Justice Foundation Fund (s13, *Law and Justice Foundation Act 2000*)

Northern Territory

Fee waiver applies

- General trust accounts
- Statutory Deposit Account

No Fee waiver

- Legal Practitioners Fidelity Fund

Queensland

Fee waiver applies

- General trust accounts
- A prescribed account (section s285, *Legal Profession Act 2007*)

No Fee waiver

- The Legal Practitioners Interest on Trust Accounts Fund
- Legal Practitioners' Fidelity Guarantee Fund

South Australia

Fee waiver applies

- Trust accounts (as defined in s 5, *Legal Practitioners Act 1981*)
- The Combined Trust Account

No Fee waiver

- Statutory Interest Account
- Legal Practitioners' Guarantee Fund

Tasmania

Fee waiver applies

- General trust accounts
- Trust Deposit Account

No Fee waiver

- Solicitors' Guarantee Fund

Victoria

Fee waiver applies

- General trust accounts
- Statutory Deposits Account

No Fee waiver

- Public Purpose Fund
- Legal Practitioners' Fidelity Fund
- Legal Aid Fund (s41, *Legal Aid Act 1978*)

Western Australia

Fee waiver applies

- General trust accounts

No Fee waiver

- Trust Interest Account – Legal Contribution Trust
- Trust Interest Account – Law Society Public Purpose Trust Fund
- Solicitors' Guarantee Fund
- Legal Aid Fund (s41, *Legal Aid Commission Act 1976*)

ATTACHMENT 2: SUGGESTED FURTHER UPDATE FOR PRACTITIONERS

Since 28 November 2008, the Commonwealth's Deposit and Wholesale Funding Guarantee Scheme has guaranteed deposits over \$1 million where account holders have, through their 'participating' Authorised Deposit Taking Institution (ADI) opted-in and paid the Commonwealth the relevant Fee.

Further general information about the Deposits and Wholesale Funding Guarantee Scheme is available from:

<http://www.guaranteescheme.gov.au/>

The Law Council of Australia and State and Territory Law Societies have together worked to persuade the Federal Treasurer to exempt solicitors' trust accounts and statutory deposit accounts from the requirement to pay the Guarantee Fee. On 30 March the Scheme Administrator publicly announced the details of a proposed exemption mechanism on the Scheme Rules web site:

<http://www.guaranteescheme.gov.au/rules/>

Exemption Granted

Terms of the exemption

The Government has decided to waive the Guarantee Fee in respect of certain types of accounts relevant to the legal profession, being:

- deposit accounts which are required by a law of the Commonwealth, a State or a Territory to be established and maintained by a party (the account-holder) for the purpose of holding monies on trust for another party or parties; where
- interest or equivalent payments are required by law to be paid into a special fund administered by a government instrumentality or agent to be used for a public purpose, rather than being payable to the account-holder or the beneficiary or beneficiaries of the trust (or related parties).

Further details about the exemption and a list of example accounts over which the federal Government has agreed to waive the Guarantee Fee are available as follows:

- For guidance on the waiver of the eligibility certificate Fee for statutory trust accounts, see - [Guidance Note Trust Accounts](#)..
- For a non-exhaustive list of sample accounts eligible for the Fee waiver, see – [Sample Trust Accounts](#).

Timing and affected accounts

The exemption is expected to apply prospectively as of 1 April 2009. In respect of the legal profession the relevant affected accounts are as follows:

- general trust accounts maintained by law practices (or their associates);
- general trust accounts maintained by approved clerks (Victoria); and
- some Statutory Deposit Accounts.

Legal practitioners should note that the Fee waiver will not apply to Controlled Money accounts, Transit Money accounts or other investment or interest bearing accounts.

Investment accounts, Statutory Interest Accounts and public purpose-type funds into which is accumulated interest or interest-like payments that originate on monies held in general trust accounts or Statutory Deposit Accounts are not eligible for the Guarantee Fee waiver.

Action legal practitioners should take

ADIs will work with the Reserve Bank of Australia ('RBA') as Scheme Administrator to exempt automatically from 1 April 2009 the relevant accounts of those law practices that have previously opted into the scheme. In short, those law practices whose general trust accounts were already subject to the Guarantee Scheme and who were responsible to their ADIs for the cost of the Guarantee for amounts above \$1 million prior to the exemption commencement date, need take no further action.

An abundance of caution would suggest it is wise to confirm with the ADI the currency of the Fee waiver pursuant to the exemption.

Law practices that have not previously opted into the Guarantee Scheme for Large Deposits may wish to revise their decision not to guarantee general trust balances that exceed \$1 million. ADIs wishing to offer guarantee products must comply with the Guarantee Scheme requirements to obtain a Certificate of Eligibility prior to being able to offer their account holders the benefit of such products.

If opted-in law practices encounter any difficulty in accessing the fee waiver in respect of an eligible general trust account, Treasury representatives advise that they should in the first instance, contact their ADI and notify the RBA as Scheme Administrator.

Next steps

The Government's decision to exempt general trust accounts and Statutory Deposit Accounts from 1 April 2009 represents a significant positive outcome for law practices and their clients.